

DRAFT CONTRACT FOR
MASTER PLANNING, SCHEMATIC DESIGN AND PRELIMINARY
ENGINEERING AND DESIGN SERVICES

BETWEEN

THE CITY OF LOCUST GROVE, GEORGIA,

AND

Project Name: MASTER PLANNING, SCHEMATIC PLAN AND
PRELIMINARY DESIGN FOR JOINT PUBLIC
SAFETY COMPLEX, CITY OF LOCUST GROVE,
HENRY COUNTY GEORGIA

Project Address: 3644 HIGHWAY 42
LOCUST GROVE, GEORGIA 30248

CONTRACT FOR MASTER PLANNING, SCHEMATIC DESIGN AND PRELIMINARY ENGINEERING AND DESIGN FOR JOINT PUBLIC SAFETY FACILITY – CITY OF LOCUST GROVE/HENRY COUNTY FIRE

This agreement (the "Agreement") is made and entered into by and between the City of Locust Grove, Georgia ("Owner") and _____ duly operating and existing under the laws of the State of Georgia ("Contractor").

This Agreement shall become effective on the date it is executed by the last party to execute it ("the Effective Date").

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Contractor agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Applicable Laws" means all laws, statutes, ordinances, codes, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.

1.2 "Change Order" means a written order to Contractor executed by the Owner in accordance with the contract, authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Contractor, or to the time for performance of the contract and completion of the Project, or any combination thereof.

1.3 RESERVED .

1.4 "Service Fee" means the fractional amount of the Contract Price submitted to Owner for payment in a Pay Request on a monthly basis as set forth in Article 12.

1.5 "Critical Path Schedule" means the schedule maintained by the Contractor used to manage the critical path of the Project which accurately reflects (a) the percentage of the Work completed and the Work remaining, (b) describes with reasonable particularity each Service rendered, the date thereof, the time expended in performing such Service, and the persons rendering such Service; and (c) specifies the amount of project costs, including all fees, incurred to date and estimated project costs, including all fees, remaining.

1.6 "Day," unless otherwise stated, means calendar day.

1.7 RESERVED .

1.8 "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract Documents, including all deliverables and presentations as required..

1.9 "Other Contractors" means any contractor, but not including Contractor or the Subcontractors, with whom Owner enters into a direct contract for the performance of any portion of Work in connection with the Project.

1.10 "Owner's Representative" means the individual named by Owner, in writing and as such writing may be amended from time to time, to act on Owner's behalf in the administration of this contract. Owner's Representative does not have authority to waive or modify any condition or term of the Contract Documents.

1.11 "Preliminary Engineering and Design Plans" means all design documents constituting the preliminary design of the site and building where the Joint Public Safety Facility is located.

1.12 "Project" means the master planning of the overall campus, schematic design and preliminary engineering and design plans for the Joint Public Safety Facility, located at 3644 Highway 42, Locust Grove, Georgia 30248 as shown by the Contract Documents and described under the Scope of Work.

1.7 "Schematic or Concept Design" means the layout of buildings and any and all renderings of structures on the property in preparation of preliminary engineering and design plans for the Joint Public Safety Facility.

1.13 "Services" means those services, functions, roles, responsibilities, obligations and duties required of Contractor pursuant to the terms of the Contract Documents.

1.14 "Subcontracts" means the contracts between Contractor and any Subcontractor.

1.15 "Subcontract Costs" means those sums properly paid or due and payable by Contractor under the terms of the Subcontracts.

1.15 "Subcontractor" means any person or entity having a direct contract or purchase order with Contractor for the performance or supply of all or any portion of the Work required by the Contract Documents or the supply of any materials, services, equipment or installation services required by the Contract Documents.

1.16 "Substantial Completion" means that stage of completion of the Project, including approvals through hearing or other such public action by all relevant bodies such that the Work and the Project are functionally and legally usable by Owner for the purpose for which they are intended.

1.17 RESERVED.

1.18 "Work" means any and all labor, supervision, work, supplies, fixtures, furnishings, vehicles, equipment, services, tools, materials, utilities, items, documents and things required by the Contract Documents to be performed or supplied, including all construction, testing, and permitting required to render the Project, and every component thereof, operational and usable for its intended purpose.

ARTICLE 2

THE CONTRACT DOCUMENTS

2.1 Contract Documents Defined. The contract between the parties shall consist of the "Contract Documents." The Contract Documents shall include this Agreement, the Design

for Construction, the documents listed in the Design Document List, any supplemental conditions, any special conditions, and all documents expressly annexed hereto as part of this Agreement. Change Orders issued hereafter, and any written amendments to this Agreement executed by Owner and Contractor, shall become and be a part of the Contract Documents. Documents not expressly listed above are not Contract Documents and do not constitute part of the contract between the parties.

2.2 Priority Of Documents. In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, interpretation will be based on the following descending order of priority:

- (1) This Agreement.
- (2) Request for Bids issued by the City
- (3) RFP Submittal by _____).
- (4) RESERVED
- (6) Federal Certification Forms

2.3 Substitutions. If Owner elects to accept any items proposed by Contractor as a substitution, Contractor shall assume full responsibility for the proper performance of such substituted items and shall assume the costs of any changes in the Work which may be due to such substitution.

2.4 Design Document List. The Owner has prepared a list of the plans, specifications and other documents constituting the Design for Construction (the "Design Document List") which is attached as **Exhibit "A"**. Both the Design Document List and the documents listed therein are expressly incorporated herein. Upon receipt, the Contractor shall review and study the Design Document List to confirm the Design Document List is accurate, complete and current. If requested by the Owner, the Contractor shall acknowledge, in writing, its receipt of the Design Document List and its agreement that the Design Document List is accurate, complete and current. Unless the Contractor notifies the Owner, not later than five (5) days after Contractor's receipt of the Design Document List, of an error or omission in the Design Document List, the Design Document List shall be annexed hereto as part of this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

3.1 Specific Representations And Warranties. By executing this Agreement, Contractor makes the following express representations and warranties to Owner:

3.1.1 Contractor is professionally qualified to act as the Contractor for the Project and has, and shall maintain, any and all licenses, permits, and other authorizations necessary to act as the Contractor for the Project and to perform the Services required hereunder. *See Section 4.4 of this Agreement pertaining to Fees.*

3.1.2 Contractor has become familiar with all construction documents generated to date and will become familiar with all generated hereafter, and has become familiar with the Project site and the local conditions under which the Project is to be performed.

3.1.3 Contractor has the capability and experience, including sufficient qualified and competent supervisory personnel, to efficiently and timely accomplish the Work and perform the Services, and Contractor will continuously furnish sufficient personnel to accomplish the Work and perform the Services in a timely and proper manner.

3.1.4 Contractor shall comply, and shall cause all Subcontractors to comply, with all Applicable Laws and reporting requirements.

3.1.5 Contractor assumes full responsibility to Owner for the acts and omissions of Contractor's officers, employees, Subcontractors, consultants, and others employed or retained by Contractor or them in connection with the performance of the Services or the Work.

3.1.6 Contractor warrants to Owner that all labor furnished to perform the Work under the Contract Documents will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, and in strict conformance with the Contract Documents. Any Work not strictly conforming to these requirements may be considered deficient.

3.1.7 All obligations related to or arising from all representations and warranties made in the Contract Documents shall be obligations of, and shall be deemed incorporated in, the performance bond furnished by Contractor.

3.1.8 The Contractor represents, warrants and affirms that only truthful, complete and correct information has been provided to the Owner in the Contractor's Proposal signed by _____, dated _____, and in any other communication from the Contractor regarding the Contractor's qualifications or responsibility to perform the obligations of the Contractor under this Agreement (all such information being referred to herein as "Qualification Information"). The Contractor further represents, warrants and affirms that in the event that any Qualification Information changed in any material way after it was communicated from Contractor and before this Agreement is signed by all parties, Contractor has immediately notified the Owner, in writing, of such change or changes and Contractor agrees that Owner may take such action thereon as Owner deems appropriate. The Contractor acknowledges and agrees that the Owner has relied, and will continue to rely, on the truthfulness, completeness and correctness of the Qualification Information. The Contractor acknowledges and agrees that all Qualification Information is material and important to the Owner's evaluation of the Contractor's qualifications and responsibility to undertake the Contractor's obligations under this Agreement. Contractor acknowledges and agrees that if the Contractor knowingly provided any false, incorrect, misleading or incomplete information to the Owner in any Qualification Information, or failed to advise the Owner in writing of any material change in such information as set forth in this paragraph, this Agreement shall be deemed to be materially breached by Contractor and subject to immediate termination for cause or rescission for cause by the Owner, at the sole option of the Owner. The Owner also shall have and retain any and all other rights and remedies provided by law, in contract or otherwise.

3.2 Enumerated Representations And Warranties Not Exhaustive. The representations and warranties enumerated in this Article 3 operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required by the Contract Documents or by law.

ARTICLE 4

CONTRACTOR'S SERVICES AND DUTIES: GENERAL PROVISIONS

4.1 Generally. Contractor shall perform and provide the Services and the Work required by, or reasonably implied by or inferable from the Contract Documents; and shall be responsible for the construction of the Project in strict conformance with the requirements of the Contract Documents; and shall pay for all labor, supervision, materials, supplies, furnishings, equipment and things required by the Contract Documents. In performing its duties hereunder, Contractor shall be a fiduciary to the Owner in whom the Owner may place its full trust and confidence.

4.2 Standard Of Care. Contractor shall perform the Services at a level, and be judged by a standard of care, that is consistent with the standards and quality prevailing among first-rate, nationally recognized construction firms of superior knowledge, skill and experience engaged in projects of similar size and complexity. Contractor shall carry out and complete the Services in an efficient, economical and timely manner, as expeditiously as is consistent with the level of skill and care required hereby and the interests of Owner, and in strict accordance with the Contract Documents.

4.3 Compliance With Applicable Laws. Contractor shall reasonably ensure that the Services and Work are performed, and the Project is constructed, in a manner which meets the requirements of all Applicable Laws relating to the construction, occupation, and operation of the Project, including, but not limited to, building codes, fire and safety regulations, and environmental regulations. Such Applicable Laws shall be deemed minimum standards for the Project. Where the requirements of the specifications and the accompanying plans exceed those of the Applicable Laws, the plans and specifications shall be followed. Contractor shall immediately notify the Owner's Representative in writing of any known violation by any Subcontractor of any Applicable Law, or any such violation of which the Contractor reasonably should have known.

4.4 Secure Permits, Licenses, Approvals, And Authorizations. Contractor shall secure all necessary licenses, permits, approvals or other necessary authorizations of governmental authorities for the construction of the Project; however, all City of Locust Grove fees associated with such necessary authorizations and permits shall be waived. Contractor shall obtain and maintain all licenses, permits and other authorizations necessary to act as the Contractor for the Project.

4.5 Insurance. The Contractor shall have and maintain insurance in accordance with the requirements of **Exhibit "B"** attached hereto and incorporated herein by reference.

4.6 Homeland Security & Immigration Status. Contractor shall comply with federal, state and local laws and regulations with respect to homeland security and immigration.

ARTICLE 5

SCOPE OF WORK

5.1 Scope of Work, Generally. Contractor agrees to perform and instruct all work depicted in the Construction Documents including all services and work customarily associated

therewith or which is necessary for the proper construction, installation and/or safe operation of the Work during and after construction. Contractor agrees that its price includes all work needed even where not specifically shown on the drawings or contained in the specifications but which is reasonably inferable therefrom or should be installed as part of good industry practice. Any deviation should be directed to Owner for clarification and approval of the architect of record on the project.

- 5.2 Itemized List of Scope. Contractor shall follow the scope of work within the plan documents and that of the itemized list prepared for the City as **Exhibit "C"**.

ARTICLE 7

COMPLETION DATE AND SCHEDULES

7.1 Completion Date. Contractor shall achieve Substantial Completion of the Work by _____ ("Substantial Completion Date"). The time for achieving Substantial Completion may sometimes be referred to in the Contract Documents as the "Contract Time." Contractor shall achieve Final Completion of the Project within thirty (30) days after the Substantial Completion Date. Neither the Substantial Completion Date nor the time for Final Completion shall be changed except by Change Order issued in accordance with the terms of this Agreement.

7.2 Delay. The Contractor accepts the risk that the progress may be delayed, disrupted, interfered with, cause to proceed inefficiently or made more costly for any reason, including where delays are caused by design professionals, the Owner or those for whom the Owner is responsible. Contractor agrees that in the event the progress of work is delayed, disruptive, interfered with, cause to proceed inefficiency or made more costly for reasons outside of contractors control, as its sole and exclusive remedy, it shall be entitled to an extension of time equal to the length of the period of delay but in no event shall be entitled to additional money or monetary damages. For the purposes of this paragraph, all work performed by Contractor or its sub-contractors, suppliers, materialman and laborers are within the Contractor's control. If Contractor's work is delayed, disrupted, interfered with, cause to proceed inefficiently or made more costly for reasons within Contractor's control, then Contractor shall not be entitled to an extension of time and shall be added sole, cause and expense to accelerated performance as necessary to perform the Work within the time required herein. Contractor waives and releases all claims for delays, disruption, interference or inefficiency.

ARTICLE 8

PROCUREMENT OF SUBCONTRACTS, MATERIALS, AND SERVICES

8.1 Approval Of Subcontractors. Contractor shall not subcontract for any part of the Services or Work with any Subcontractor or consultant (including affiliates and subsidiaries of Contractor) who is not properly licensed or against whom Owner has a reasonable objection. Contractor shall provide Owner's Representative with such written information as Owner deems necessary in order to determine whether to object to the Contractor's hiring of any Subcontractor or consultant, including proof of license. If no objection is interposed by the Owner within thirty (30) days of its receipt of such information, Owner shall be deemed to have

no such objection and Contractor may execute such Subcontract and shall furnish Owner a copy of same.

8.2 Subcontract Requirements. All Subcontracts shall afford Contractor rights against its Subcontractors which correspond to the rights afforded to Owner against Contractor herein, including those rights of contract suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor charges as set forth herein. Except as otherwise approved by Owner in writing, or as otherwise required by applicable law, all Subcontracts shall provide for the retention of ten percent (10%) of amounts earned under the Subcontracts ("Subcontract Retainage"), and Owner shall not be responsible for releasing, paying, or compensating Contractor any amount on account of such Subcontract Retainage until such time as specified by this Agreement for release of retainage.

8.3 Coordination Of The Subcontracts. Owner does not assume any responsibility for defining the limits on any Subcontracts on account of the arrangement of the Construction Documents. Contractor shall ensure that the Subcontracts are coordinated so that all of the Work is properly and clearly allocated among, and assigned to, Contractor and Subcontractors without omission, conflict, or duplication. Contractor shall carefully review all Subcontracts to ensure: (a) that all subcontracted parts of the Work are assigned to appropriate Subcontractors; (b) that, unless provided for by Contractor, provisions are made for temporary facilities and utilities necessary for the performance of the Work and for Project site facilities necessary for Contractor and Owner to perform their duties in the management, inspection, and supervision of the Work; (c) that responsibility for Project safety programs is properly assigned; (d) that they are in compliance with Applicable Laws; and (e) that they are in compliance with Owner's Contractors' guidelines, if any.

8.4 Contractor Responsible For Acts Of Subcontractors. Contractor's subcontracting of the Services or the Work, and Owner's consent and approval of Contractor's subcontracting with any Subcontractor, shall not relieve Contractor from any liability or obligation under the Contract Documents or under any Applicable Laws. Contractor shall be responsible to Owner for any and all acts, defaults, omissions or negligence of its Subcontractors and consultants. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor or consultant of Contractor, and a provision to this effect shall be inserted into all Subcontracts and other agreements between Contractor and its Subcontractors and consultants. In no event shall Owner be liable to any of Contractor's Subcontractors for Work performed by such Subcontractor on behalf of the Contractor or for the Project.

8.5 Contractor To Enter Into Subcontracts. Contractor shall enter into Subcontracts with Subcontractors for the performance of those portions of the Work not performed directly by the Contractor. Contractor shall protect Owner's interests during the performance of such Subcontracts and shall monitor and secure strict performance by the Subcontractors of all duties and obligations contained in the Subcontracts. Contractor shall promptly notify Owner's Representative in writing of any material breach by a Subcontractor and shall take all necessary steps to remedy such breach and to minimize the effect of such breach on the timely and proper completion of the Work, all at no additional cost to the Owner.

ARTICLE 9

INSPECTIONS AND CERTIFICATIONS OF COMPLETION

9.1 Inspection Of Work. Contractor shall, on a continuous basis as a part of its day-to-day supervision of the Project, inspect the Work to ensure that the quality, quantity and progress of the Work meets the requirements of the Contract Documents. In making such inspections, Contractor shall reject Work that is deficient, take steps to avoid unexcused delays in the performance of the Work, and protect Owner from overpayment.

9.2 Standard Of Professional Services And Identification Of Defective Work. Contractor shall cause the Project to be performed in strict compliance with the requirements of the Contract Documents and Applicable Laws. Contractor acknowledges that strict compliance is a more exacting standard than substantial compliance and Contractor agrees that its fee takes into consideration the more exacting standard. Owner will not accept Work which fails to comply with such standards, unless the departure from such standards is specifically identified to, and thereafter authorized in writing by, Owner's Representative. Unless so authorized by Owner's Representative, Contractor shall correct all Work that does not meet the requirements of the Contract Documents and Applicable Laws.

9.3 Transfer Of The Work And The Project To Owner. Contractor shall provide assistance to Owner in the transfer of the completed Project, and all portions thereof, to Owner..

ARTICLE 10

PROJECT DOCUMENTATION

10.1 Basic Project Documentation. Contractor shall maintain the following documents on behalf of and for the use of Owner: (a) a complete set of current Subcontracts and Contract Documents, including a current set of drawings, specifications, Change Orders and modifications reflecting product and materials selections and as-built conditions on the Project; (b) all samples, product data, and other Submittals; (c) all required insurance certificates from Subcontractors; and (d) all other documents required by this Agreement.

10.2 Review And Assignment Of Warranties. Contractor shall obtain and shall transmit to Owner's Representative all special product, system, equipment or material warranties required by the Contract Documents and the Subcontracts. Contractor shall review all such warranties to confirm that the warranties are in compliance with the requirements of the Contract Documents and Subcontracts. By execution of this Agreement, Contractor hereby assigns to Owner all of Contractor's rights, title and interest in and to any and all warranties, including Uniform Commercial Code warranties, that Contractor receives or is entitled to receive from any Subcontractor or supplier in connection with the Project.

10.3 Availability Of Project-Related Records To Owner. All records relating directly or indirectly to the Project which are in the possession or control of Contractor shall be made available to Owner, its designee, and any governmental authority for audit, inspection, and copying upon request of Owner's Representative. Such records include, without limitation: all drawings, specifications, Submittals, subcontractor bids, the Daily Log, correspondence, the Request Log, the Submittal Log, minutes, memoranda, tape or videotape recordings, or other writings or things which document the Project, its design, and its construction.

10.4 Maintenance Of Project-Related Records. Contractor shall maintain and protect all Project-related records, other than those required to be returned to Owner, for no less than six (6) years after Final Completion of the Project and for any longer period of time as may be required by law or good construction management practice.

10.5 RESERVED.

ARTICLE 11

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

11.1 Provide Project Information. Owner shall provide Contractor with adequate information regarding Owner's requirements for the Project including any desired or required design or construction schedule, any budgetary requirements, and any and all prior historical documents related to the completion of the Scope of Work by the Contractor..

11.2 Access To The Site And The Work. Owner shall provide Contractor access to the site and to the Work as necessary for Contractor to perform the requirements of the Contract Documents.

11.3 Non-Waiver. Owner's failure to exercise any right or remedy hereunder or to require strict compliance with any obligation of Contractor under the Contract Documents shall not constitute a waiver or an estoppel of the right to exercise such right or remedy or to insist on such compliance at any other time or on any other occasion.

ARTICLE 12

PAYMENT TO CONTRACTOR

12.1 Compensation. Owner shall pay, and Contractor shall accept, as full and complete compensation for Contractor's assumption and performance of all duties, obligations, Services and Work required by the Contract Documents and this Agreement, the sum of _____ Dollars and No/100 (\$_____00) for the Final Completion of the Project ("Contract Price").

12.4 Form Of Pay Requests And Backup Documentation. As soon as practicable but before the 25th day of each month (or following business day if this date falls on a weekend day or observed holiday), Contractor shall submit a notarized invoice to Owner's Representative requesting payment ("Pay Request") for ninety percent (90%) of the Fee earned by Contractor in the performance of Services and the Work during the preceding month.

12.4.1 Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are suitably stored at the Project site and fully insured against loss or damages. Moreover, any sums approved for stored materials shall be at actual costs and shall not include markup by Subcontractors or Contractor's fees. As used in the immediately preceding sentence, actual costs means costs charged by the manufacture or the distributor for the manufacturer and the Pay Request shall include copies of invoices from the manufacturer or the distributor.

12.4.2 Upon payment of fifty percent (50%) of the Contract Price, as it may be adjusted, and satisfactory, timely completion of fifty percent (50%) of the Work, Owner shall not retain additional retainage and Contractor's Pay Requests may thereafter request payment for one hundred percent (100%) of the Fee earned during the pay period; provided, however, that if, after discontinuing such retainage, Owner determines that the Work is unsatisfactory or has fallen behind schedule, Owner may resume withholding retainage at the previous level.

12.4.3 Each Pay Request shall separately show the amounts of Construction Fee being claimed in connection with such Pay Request and any amounts claimed in connection with a Change Order. Pay Requests shall also include an updated Critical Path Schedule.

12.4.4 RESERVED.

12.4.5 Unless otherwise directed by Owner's Representative, Pay Requests shall be submitted in triplicate, bearing the appropriate job numbers designated by Owner's Representative, to Owner for approval. Pay Requests shall be in such form and accompanied by such documentation, including documentation in support of Subcontract Costs, if any, as Owner may require. All documents and records in the possession of Contractor and its Subcontractors relating to Subcontract Costs shall be made available to Owner or its designee for audit, inspection and copying immediately upon request by Owner's Representative. Strict compliance with the requirements of this paragraph 12.4 shall be a condition precedent to any payment, including Final Payment, under this Agreement.

12.5 Claim Releases And Verified List Of Subcontractors. If requested by Owner, in Owner's sole discretion, each Pay Request shall be accompanied by Contractor's and Subcontractors' partial waivers of claim in the form attached hereto as **Exhibit "D"** for the full amount of the payments made through the date of the Pay Request and to be made under the current Pay Request and the Work covered thereby. Provision of such waivers of claim, when requested by Owner, shall be a condition precedent to Owner's duty to make payments to Contractor. Contractor's application for Final Payment shall be accompanied by final waivers of claim from Contractor and all Subcontractors in the form attached hereto as **Exhibit "E"** together with a verified list of all Subcontractors, including suppliers of materials and systems incorporated into the Work. Provision of such final waivers of claim and verified list shall be a condition precedent to Final Payment to Contractor.

12.6 Certification Relating To Pay Requests. Each Pay Request shall bear the signature of Contractor's project manager, which signature shall constitute Contractor's representation to Owner that the Services and the Work indicated in the Pay Request have progressed to the level represented, have been properly and timely performed as required herein, that no Work has been covered contrary to the request of the Owner, or contrary to any provision of the Contract Documents, that the Subcontract Costs claimed in the Pay Request have been actually, necessarily, and reasonably incurred, that all obligations of Contractor covered by prior Pay Requests have been paid in full, and that, to the best of Contractor's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Contractor that payment of any portion thereof should be withheld. Submission of Contractor's Pay Request for Final Payment shall further constitute Contractor's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of Contractor to others incurred in connection with the Project will be paid in full

within seven (7) days of such receipt. In the event that Owner becomes informed that any of the foregoing representations by Contractor are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Contractor until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

12.7 Payment Of Pay Requests. Subject to the terms and conditions of this Agreement and the Contract Documents, and by the 7th day of the month following the previous month's Pay Request, Owner shall make payment to Contractor of all sums properly requested under the provisions of this Article and payable under the terms of this Agreement, provided that the Pay Request is in proper order and is supported by all required documentation. If the Pay Request is not in proper order or is not supported by all required documentation, then Owner shall notify Contractor of such deficiency and the time for payment of such Pay Request, or any applicable part thereof, shall be extended by the amount of time required for Contractor to cure such deficiencies plus three (3) days.

12.7.1 Any balance on a Pay Request not paid by Owner to Contractor in accordance with this Article shall accrue interest at 1.5% per month except with the amount is disputed in accordance with paragraph 12.11.

12.7.2 When payment is received from Owner, the Contractor shall immediately pay or cause to be paid all Subcontractors, subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid, or caused to be paid, a Subcontractor, subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Construction Manager and any such Subcontractor, subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

12.8 Payment At Substantial Completion. Subject to the limitations of the Contract Price, and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Substantial Completion of the Project, Owner shall pay Contractor all sums due Contractor, including retainage, less any amounts attributable to liquidated damages, and less two hundred percent (200%) of the reasonable cost for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. As a condition precedent to such payment, however, Contractor shall deliver to Owner's Representative the final complete set of as-built drawings in the form of marked-up black line drawings, all required releases of claim, final lien waivers from the Contractor and all Subcontractors and suppliers of materials, all certificates of completion or similar documents required for the occupation and use of the Project for its intended purposes, all required warranties, all Project Documentation as described in Article 12 herein, and consent(s) of surety to release retainage in form and manner acceptable to Owner together with an original current power of attorney with current certificate attached thereto.

12.9 Payment At Final Completion. Subject to the limitations of the Contract Price, and provided that all conditions precedent have been satisfied, within thirty (30) days after execution of the Certificate of Final Completion of the Project, Owner shall pay Contractor all unpaid sums due Contractor under this Agreement, less any amount properly withheld pursuant to this

Agreement ("Final Payment"). Contractor's acceptance of Final Payment shall constitute an unconditional waiver and release of all claims by Contractor for additional compensation beyond that provided in the Final Payment. Final Payment by Owner shall not, however, constitute a waiver by Owner of its rights or claims arising from Contractor's failure to perform in strict accordance with the requirements of the Contract Documents. As a condition precedent to Final Payment, Contractor shall deliver to Owner's Representative consent(s) of surety to final payment in form and manner acceptable to Owner together with an original current power of attorney with current certificate attached thereto.

12.10 Withholding Of Payment. Any provision of the Contract Documents notwithstanding, Owner shall not be obligated to make a payment or payments to Contractor which is otherwise due, if, and for so long as, any one or more of the conditions set forth in this paragraph 12.10 exists.

12.10.1 Contractor's Pay Request is not in the form or supported by the documentation required by this Agreement.

12.10.2 Contractor is in default of any of its obligations under the Contract Documents.

12.10.3 Any part of such payment is attributable to Services or Work which are defective or not strictly conforming with the requirements of the Contract Documents; provided, however, that payment shall be made as to the part thereof attributable to Services or Work which are rendered or performed in strict accordance with the Contract Documents and are not defective, subject to other provisions hereof.

12.10.4 Contractor has failed to make payments promptly to its Subcontractors, consultants, employees, or others performing Services in connection with the Project or any person has filed a claim that Contractor has failed to make payments due to such person.

12.10.5 Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Contractor.

12.10.6 Evidence that the balance of the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the Contract Price.

12.10.7 Failure or refusal by Contractor to perform the Work in accordance with the Contract Documents.

12.10.8 Damage to Owner or to a third-party to whom Owner is, or may be, liable.

12.10.9 Any situation or condition exists which, as set forth elsewhere herein or in the Contract Documents, justifies the withholding of payments.

In the event that any of the foregoing conditions exist, Owner shall be entitled to withhold from any sum then due or thereafter to become due, including from retained sums, an amount sufficient in the sole judgment of Owner's Representative to satisfy, discharge, and defend against such claims and to make good any losses, prospective losses, costs, attorneys' fees, and other expenses which may result from the existence of such conditions.

12.11 Disputed Pay Requests. In the event Owner disagrees with or questions all or any portion of any Pay Request, the amount due to Contractor, or the sufficiency of the information and documentation submitted by Contractor, Owner shall notify Contractor in writing and Owner shall pay the undisputed parts of such Pay Request. If Owner's Representative and Contractor are able to agree on the amount due under the disputed part of any Pay Request, payment will be made to Contractor within the time provided by paragraph 12.7 of this Agreement or ten (10) days after receipt of a new Pay Request representing the agreed amount, whichever is later.

12.12 Conditions Precedent To Payment. In addition to all other conditions contained herein, it shall be a condition precedent to any payment otherwise due hereunder that: (a) Contractor not be in material breach of this Agreement or in breach of any warranty made therein; (b) Contractor have submitted all monthly updated Critical Path Schedules required by this Agreement; and (c) Contractor have submitted its Pay Requests and backup documentation in the time, form, and manner required by this Agreement.

12.13 Non-Waiver Of Claims For Defective Work. Neither entrance, inspection nor use of the Project by Owner or their representatives, nor any payment (whether final or otherwise) made by Owner shall be construed as an acceptance of defective or nonconforming Work nor shall such entrance, inspection, use, or payment release Contractor from any of its obligations under the Contract Documents.

ARTICLE 13

PAYMENT AND PERFORMANCE BONDS

TBD

ARTICLE 14

OWNERSHIP OF DOCUMENTS

All Contract Documents, as well as information and items provided by Owner to Contractor to facilitate Contractor's performance hereunder, shall remain the exclusive property of Owner, and all such documents, information, and items, including all copies thereof, shall be returned to Owner's Representative upon Final Completion and as a condition precedent to Final Payment; provided that Contractor may retain one copy of same for record purposes only.

ARTICLE 15

INDEMNITY

15.1 General Indemnity. To the fullest extent permitted by law, the Contractor shall indemnify and hold Owner harmless from and against any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Contractor's performance of this Agreement, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

15.2 Enforcement Of This Agreement. In the event Owner retains legal counsel to secure performance by Contractor of any of its obligations under this Agreement, or if Owner retains or utilizes such counsel to represent its interest with respect to any matter for which Contractor has an indemnity obligation to Owner under any provision of this Agreement or otherwise, Contractor shall pay and reimburse Owner for the cost of such counsel and shall further pay and reimburse Owner for any and all other cost and expense incurred in preparing, negotiating, or prosecuting any claim against Contractor, including, but not limited to, any and all expert witness fees and expenses.

ARTICLE 17

TERMINATION

17.1 Termination For Cause. If Contractor refuses or fails to perform its Services and duties under this Agreement in a timely manner, supply enough properly skilled supervisory personnel, labor or proper equipment or materials, make prompt payment to its Subcontractors, suppliers, employees, or consultants, or comply with Applicable Laws, or if Contractor is otherwise guilty of a material breach of this Agreement or any warranty made herein, then Owner may, by written notice to Contractor, and without prejudice to any other right or remedy, terminate the employment of Contractor, in whole or in part, and take possession of the Project site, the Contract Documents, Subcontracts, Project Documentation in the possession of Contractor, and all equipment and materials at the site.

17.2 Termination By Contractor. If the Work, the Services, or this Agreement is suspended by Owner in its entirety for a period of one hundred and twenty (120) consecutive days or more, through no fault of Contractor or the Subcontractors, by governmental authority or by direction or neglect of Owner's Representative, or if Owner fails to perform its material obligations to the Contractor for a period of sixty (60) days after receipt of written notification from Contractor of its intent to terminate hereunder, then Contractor may, upon ten (10) days written notice to Owner, terminate its performance under this Agreement. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance for convenience.

ARTICLE 18

ENVIRONMENTAL ISSUES

Environmental Licenses, Certifications, & Permits. Contractor covenants and agrees that during the term of the Agreement and any extensions or renewals thereof, all of its employees, agents, representatives, and Subcontractors, if any, performing Work will have the requisite skills, licenses, certifications, training, permits and the like mandated by all applicable federal, state and local governing authorities with jurisdiction over environmental matters. Contractor agrees to provide to Owner's Representative evidence of compliance with the requirements of this paragraph upon demand. Contractor, its Subcontractors, representatives, employees, and agents shall comply with all federal, state, and local laws, rules, and ordinances relating to environmental protection governing the Work.

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1 Notices. No notice is effective until the writing containing the notice is placed in the hand of the Owner's Representative or the Contractor's Project Manager or is postmarked by certified U.S. Mail, to the following addressees:

To Owner: City of Locust Grove, Georgia
 3644 Highway 42
 Locust Grove, GA 30248
 Attention: Mayor Robert S. Price

To Contractor _____

All notices shall be effective within 5 days from mailing.

19.2 Successors And Assigns. Contractor shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without Owner's Representative's written consent; Owner shall have the right to assign its rights under this Agreement, but any such assignment shall not relieve Owner of its obligations hereunder. Subject to the provisions of the immediately preceding sentence, Owner and Contractor, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all terms and conditions of this Agreement.

19.3 No Third Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including any Subcontractor.

19.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or other competent tribunal or rendered invalid by any legislative or regulatory enactment, the remaining provisions of this Agreement shall remain in full force and effect, and such holding or enactment shall not invalidate or render unenforceable any other provision hereof.

19.5 Headings. The headings used in this Agreement are merely for convenience and shall have no other force, effect or purpose.

19.6 Exhibits. All exhibits annexed hereto are incorporated by reference and made a part of this Agreement.

19.7 "Including". The terms "including," "includes," and their derivatives are not intended as terms of limitation, and shall be deemed in each instance to be followed by the phrase "without limitation."

19.8 Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Georgia. Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. The Contractor and its Surety(ies) irrevocably consent to the non-exclusive venue and jurisdiction of the Superior Court of Henry County, Georgia, regarding any matter arising out of or relating to this Agreement.

19.9 Entire Agreement / Amendments In Writing. This Agreement represents the entire agreement between Owner and Contractor and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. Subject only to the provisions of Article 15, this Agreement may be amended only by written instrument signed by both Owner and Contractor.

19.10 Waiver. No waiver by Owner of any one or more defaults by Contractor in the performance of the provisions of this Agreement shall be construed as a waiver of any other defaults, whether of a like kind or different nature.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

CITY OF LOCUST GROVE, GEORGIA

By: _____
[Signature] [SEAL]

By: _____
[Signature] [SEAL]

ROBERT S. PRICE
[Printed Name]

[Printed Name]

MAYOR
[Printed Title]

[Printed Title]

ATTEST: _____
[Signature] [SEAL]

TRACEY SULLIVAN
[Printed Name]

[Printed Address]

CITY CLERK
[Printed Title]

[Date of Execution]

CITY HALL
3644 Highway 42- Locust Grove, GA 30248
[Printed Address]

[Date of Execution]

EXHIBIT “A”

DESIGN DOCUMENT LIST

- (1) *Renovations to Locust Grove City Hall*, consisting of seventeen (17) pages (Cover Page and Drawings A 1.0 through E 1.1), prepared by Richard + Wittschiebe Hand Architects for City of Locust Grove, job no. 201214, dated 04/08/13, and sealed by Janice N. Wittschiebe (Ga. Reg. Architect no. 5967).

EXHIBIT “B”

INSURANCE

EXHIBIT “C”
ITEMIZED SCOPE OF WORK

EXHIBIT "D"

PARTIAL WAIVER AND RELEASE OF CLAIM RIGHTS

PROJECT: MASTER PLANNING, SCHEMATIC DESIGN, PRELIMINARY ENGINEERING
PLANS FOR JOINT PUBLIC SAFETY FACILITY
OWNER: City of Locust Grove, Georgia

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, any and all labor and material bond rights and claims, and any and all equitable rights and claims for all labor, subcontract work, equipment, materials and services supplied to the above project through the date indicated below.

This RELEASE and WAIVER shall inure to the benefit of and may be relied upon by OWNER.

The undersigned further warrants that all persons employed by the undersigned and all persons supplying materials to the undersigned and all persons renting equipment to the undersigned have been paid in full.

DATED: _____ FIRM: _____
BY: _____
TITLE: _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 201__.

Notary Public

EXHIBIT "E"

FINAL WAIVER AND RELEASE OF CLAIM RIGHTS

PROJECT: MASTER PLANNING, SCHEMATIC DESIGN, PRELIMINARY ENGINEERING
PLANS FOR JOINT PUBLIC SAFETY FACILITY
OWNER: City of Locust Grove, Georgia

The undersigned does hereby forever release, waive and discharge any and all claim rights and claims, any and all labor and material bond rights and claims, and any and all equitable rights and claims for all labor, subcontract work, equipment, materials and services supplied to the above project.

This RELEASE and WAIVER shall inure to the benefit of and may be relied upon by OWNER.

The undersigned further warrants that all persons employed by the undersigned and all persons supplying materials to the undersigned and all persons renting equipment to the undersigned have been paid in full.

DATED: _____ FIRM: _____
BY: _____
TITLE: _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 201__.

Notary Public